

REMARKS

The pending restriction requirement requires Applicant to elect one of the following inventions under 35 U.S.C. §121: Claims 1 to 16 and 37 to 45, drawn to an apparatus and method for transporting, classified in class 406, subclass 38; Claims 17 to 27, drawn to a blowing unit, classified in class 406, subclass 122; and Claims 28 to 36, drawn to a conveyor, classified in class 406, subclass 169.

Applicant is further required under 35 U.S.C. §121 to elect a single species for prosecution on the merits, the species are identified as: Species I corresponding to FIG. 2; Species II corresponding to FIG. 4; Species III corresponding to FIG. 6; and Species IV corresponding to FIG. 7.

I. Traversal of Restriction

Applicant respectfully traverses the recited basis for restriction and asserts that the requisite requirements for restriction have not been satisfied. In particular, restriction is never proper unless (1) the inventions are independent or distinct as claimed, **and** (2) there is a serious burden on the examiner. *See* M.P.E.P. §803. Applicant asserts that a serious burden does not exist in this instance because a comprehensive search and examination of the subject matter claimed in any one group will necessarily include a search and examination of the subject matter of the remaining groups. For instance, Applicants assert that a search of the portable landscape/construction material blower recited by Claims 1 to 16 and 37 to 45 will include the portable landscape/construction material blowing unit recited by Claims 17 to 27, and vice versa. Moreover, the alleged distinction of a hopper having a selected volume generally recited in Claim 17 of the invention set forth in the Claims 17 to 27 is similarly recited in Claim 12 of the invention set forth in the Claims 1 to 16 and 37 to 45. Thus, a thorough search and examination of this alleged distinction will necessarily include the subject matter of at least the Claims 1 to 16 and 37 to 45, and the Claims 17 to 27. For at least these reasons, Applicant asserts that the claimed subject matter is not so unrelated that it would create a serious burden on the examiner to search and examine Claims 1 to 16 and 37 to 45, and the Claims 17 to 27.

Moreover, the Species I, II, III and IV corresponding to FIGS. 2, 4, 6 and 7, respectively, each generally illustrate a blower coupled to a power source to drive the blower. In particular, the power source can be an engine, a hydraulic valve and remote source, a remote source and a

hydraulic valve and remote source coupled to a control box. Applicant respectfully asserts that even if these claims are clearly patentable over each other as to make restriction proper, that the Species I to IV constitute a reasonable number and are covered by the generic linking Claims 1 17 and 42 which are generally directed to a portable landscape/construction material blower and a method of dispensing landscape/construction materials. For at least these reasons, Applicant asserts that the claimed subject matter directed to alleged Species I to IV is not so unrelated that a search and examination can be conducted without imposing a serious, or even additional, burden upon the examiner.

II. Required Election

In order to present a complete response to the pending restriction requirement, Applicant elects, with traverse, the invention of Claims 1 to 16 and 37 to 45. Furthermore, Applicant elects to pursue the subject matter directed to alleged Species I which corresponds to FIG. 2 and is embodied at least in Claims 1 to 16 and 37 to 45. However, Applicant respectfully requests that, at a minimum, that the subject matter of Claims 1 to 16 and 37 to 45 and Claims 17 to 27 be grouped together such that the upon allowance of the generic links claims 1, 17 and 42 the subject matter directed to non-elected Species II to IV can be rejoined.

Of course, Applicant reserves the right to refile the non-elected claims in subsequent divisional applications. It is understood that the claims of any subsequent divisional application are presumptively patentable over each of the inventions and species discussed herein. Moreover, Applicant will rely on this presumption during the prosecution of any subsequently filed divisional applications.

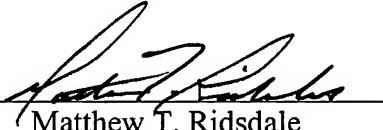
III. Conclusion

Applicant respectfully requests withdrawal of the pending restriction requirement and issuance of a substantive Office Action examining claims 1 to 45.

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BY



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